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W3A:

1. The USG has experienced exaggerated and ill-founded accusations on issues of detainees, black sites, torture allegations, renditions and Guantanamo. The Secretary's robust response before and during her visit to Europe helped to quell the criticism and to launch serious discussion of the complex issues involved in the global war on terror. We need to do more to reinforce the Secretary's message and address issues aggressively country by country.

2. In some countries, concern over renditions and detainees simply does not resonate widely, or does so in a limited way. In others, however, it is clear that exaggerations and unfounded speculations will remain in the headlines. For these countries, we request that posts follow the Secretary's lead by contacting their host government at senior levels to continue the dialogue and to:

- a. Stress the importance of our common goal in the global war on terror.
- b. Remind them that the struggle to protect societies is urgent as well as difficult.
- c. Ask them as responsible officials to bring balance to discussions on this in the public forum. Current blanket criticism of U.S. practices – which is based largely on misperceptions of U.S. practices and not facts – must be replaced by a more rigorous and responsible dialogue. Many of the allegations being made against the United States are absurd.
- d. Let them know that we are working to respond on these issues: Assistant Secretary Fried spoke at the EU Troika meeting in Austria this week; Ambassador Crumpton, the Coordinator for Counter Terrorism, will discuss the terrorist threat at a conference and in the media in London next week; Legal Adviser John Bellinger will address the legal issues at a COJUR meeting (EU Foreign Ministry legal advisers) in Brussels in February.
- e. Ask them their views as to how we can best address these issues in their country. In particular, how do we best convey the US position that we consider this war, not in the rhetorical sense, but war where the laws of war, and not criminal law alone, apply.
- f. Urge them to join us in re-shaping public debate on this issue, drawing on the themes below.

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3. Below are general talking points followed by talking points on renditions and Guantanamo. Use these to speak publicly and privately on the issues. Feel free to share these points in an appropriate manner with citizen advocates, journalists and friendly nationals.

With regard to allegations of torture, detention, McCain and the war on terror:

- We agree that this is a serious issue that deserves serious consideration. We recognize that there are concerns.
- We believe that much of the current debate in Europe fails to recognize the complexity of the threat posed by transnational terrorism.
- We are engaged in a difficult struggle against transnational terrorists, and it is right to use all legal tools in this fight. This should be defended.
- No one should be surprised that intelligence agencies, both in America and around the world, engage in intelligence gathering activities, and these activities gather potentially significant, life-saving intelligence. There is excellent cooperation among our intelligence agencies.
- The al Qaida terrorists we fight have turned war and the customary rules of engagement upside down. Their goal is not to attack combatants but to carry out the widespread killing of non-combatants.
- As a legal matter, we are in a state of international armed conflict with al Qaida. Al Qaida leaders and members have said as much. For example, one of the London bombers stated "We are in a war with you, and I am a soldier in that war." In these circumstances, traditional criminal law rules are insufficient to address the problem.
- Under the traditional laws of war, the capture, detention, transfer and questioning of enemy combatants is justified, and necessary, to restore peace.
- With respect to detainees, the United States Government complies with its Constitution, its laws and its treaty obligations.

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- The United States has been clear in describing its position on torture: U.S. criminal law and treaty obligations already prohibited torture, and the United States does not engage or condone torture anywhere. We have also stated that as a matter of policy the U.S. does not authorize interrogations involving cruel, inhuman, or degrading treatment, as defined by U.S. obligations under the UN Convention Against Torture, regardless of where those interrogations may occur.
- The recently-enacted McCain legislation, which represents constructive cooperation between the executive branch and Congress and which received strong bipartisan support, made this policy on cruel, inhuman or degrading treatment a matter of U.S. law and sends an important message underscoring that the United States upholds the values of freedom and humanity on which it was founded.
- The legislation strikes an appropriate balance. It:
 - respects the authority of the President to take steps necessary to defend the homeland;
 - codifies existing administration policies related to the treatment of detainees;
 - clarifies the standards of judicial review that will be available to detainees; and
 - establishes important and necessary protections for U.S. personnel who, at great personal risk, are on the front lines in the war against terrorism.
- Our detention policy, and the recently enacted McCain legislation, demonstrate common values we hold with Europe.
- (If raised: the President's signing statement reflects a frequently-used Executive Branch position about the execution of laws within the context of the President's constitutional responsibilities; it is not meant, and does not indicate, any intention to weaken enforcement of or "reinterpret" the McCain Amendment.)
- In moving forward in our dialogue on these issues, Europe needs to know that the United States fully understands that these are difficult issues and that differences remain.

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- But we ask that EU countries promote more balanced debates within their own countries in the future by recognizing several points:
 - We are all facing a serious terrorist threat, and it is necessary and appropriate in many circumstances to use force to confront this threat;
 - Military and intelligence tools are vital and should be defended; our publics expect their governments to take aggressive actions to defend them against terrorist attacks.
 - The current blanket criticism of U.S. practices – which is based largely on misperceptions of U.S. practices and not facts – must be replaced by a more rigorous and responsible dialogue. Many of the allegations being made against the United States are absurd.

With regard to renditions and secret sites:

- All governments have a responsibility to protect their citizens from harm. The United States works cooperatively with countries around the world to achieve this objective.
- We are working closely with allies and partners in Europe and globally to protect our citizens against a vicious terrorism adversary.
- The war on terrorism sometimes involves the capture, detention and questioning of enemy combatants engaged in terrorism. We must question them to gather potentially significant, life-saving intelligence.
- Our law enforcement and intelligence cooperation has resulted in foiling a number of deadly plots against cities and citizens in Europe and elsewhere.
- As Secretary Rice and CIA Director Goss have recently stated, U.S. intelligence agencies have handled the gathering of intelligence from a very small number of extremely dangerous detainees, including individuals who planned the 9/11 attacks.
- The questioning is to be conducted within U.S. law and treaty obligations, without using torture.

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- We will not confirm or deny specific intelligence activities; we cannot discuss information that could compromise the success of intelligence, law enforcement, and military operations.
- No one should be surprised that intelligence agencies, both in America and around the world, engage in intelligence gathering activities.
- With respect to detainees, the United States Government complies with its constitution, its laws and its treaty obligations. The United States does not commit, authorize, or condone torture. Recent U.S. legislation further codifies on a worldwide basis existing U.S. policy against cruel, inhuman or degrading treatment or punishment.
- Where there have been cases of unlawful treatment of detainees, the U.S. has vigorously investigated and, where the facts warranted it, prosecuted and punished those responsible.
- The United States does not transport detainees from one country to another for the purpose of interrogation by torture and has not used the airspace or airports of any country for the purpose of transporting a detainee to a country where he will be tortured.
- The United States has not transported anyone, and will not transport anyone, to a country when we believe he will be tortured. Where appropriate, the United States seeks assurances that transferred persons will not be tortured.
- In conducting renditions, this administration has respected and will continue to respect the sovereignty of other countries.

With regard to Guantanamo Detainees:

- The American response to terrorist attacks launched against the United States has yielded many captured enemy combatants who were captured while bearing arms against the United States or otherwise acting in direct support of hostile armed forces.

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- The Guantanamo Bay detention facility was established because the United States needed a safe and secure location both to detain and interrogate enemy combatants. Today, Guantanamo houses enemy combatants, including terrorist trainers, recruiters, bomb-makers, would-be suicide bombers, and terrorist financiers.
- More than 4,000 reports from these detainees have provided information on terrorist activities. These reports have helped save the lives of U.S. and coalition forces overseas, as well as thwarted threats posed to innocent citizens in the United States and abroad. For example, the interrogation of Muhammad al-Kahtani enabled the Department of Defense to gain a clear picture of Kahtani's strong connection to al-Qaeda leadership, to include Osama Bin Laden. More importantly, he provided valuable intelligence information helping the U.S. to understand the recruitment of terrorist operatives, logistics, and other planning aspects of the 9/11 terrorist attack.
- Capturing and detaining enemy combatants is a matter of national security, military necessity, and common sense. It has been the practice of the United States and its allies in every modern war. It is a universally recognized practice under the law of war, also known as international humanitarian law.
- Under the law of war, there is no requirement that a detaining power charge enemy combatants with crimes, or give them lawyers or access to courts while hostilities are ongoing. States in prior wars have generally not done so.
- Under U.S. law, the authority to detain enemy combatants exists in law independently of the judicial or criminal law system. This is a core function of the President's authority as commander-in-chief under the U.S. Constitution.
- The UN Commission on Human Rights and some human rights groups have argued that all enemies captured in battle are Prisoners of War. Al-Qaeda is a terrorist organization and therefore not covered by the Geneva Conventions; thus, their members are not entitled to POW status. Further, even if the Geneva Conventions applied, enemy combatants engaged in terrorist activities would not be considered Prisoners of War.

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as they do not follow responsible command, do not carry weapons openly, do not wear uniforms and do not comply with the laws of war.

- All detainees are treated in accordance with international obligations and the principles of the Geneva Conventions.
- Abuse and other misconduct involving detainees have occurred, and the U.S. Government has held people accountable. More than 390 criminal investigations have been conducted and more than 100 individuals have been held accountable for alleged detainee abuse (i.e., courts-martial, confinement for a term of years, non-judicial punishment, reprimand, and separation from the service).
- If new allegations arise, they are reviewed, and when factually warranted, investigated. As a result of investigation, administrative, disciplinary, or judicial action is taken as appropriate. The United States has taken and continues to take all credible allegations of detainee abuse seriously.
- The President of the United States has made clear that the United States stands against and will not tolerate torture under any circumstances. On United Nations International Day in Support of Victims of Torture, June 26, 2005, President Bush stated that, "The United States reaffirms its commitment to the worldwide elimination of torture. Freedom from torture is an inalienable human right, and we are committed to building a world where human rights are respected and protected by the rule of law."
- It is DoD policy that detainees are treated humanely. They are provided with proper shelter, clothing, the means to send and receive mail, reading materials, three meals per day that meet cultural dietary requirements, and medical care. Each detainee is allowed to exercise his religious beliefs, including issuance of prayer beads, rugs, and copies of the Koran.
- Military operations at Guantanamo Bay are not conducted in secrecy. The Department of Defense works closely with the International Committee of the Red Cross (ICRC), and ICRC representatives are permitted access to DoD detention facilities and meet privately with detainees under DoD control at Guantanamo. There have been more than 280 members of Congress and congressional staff who have visited

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Guantanamo Bay, including 20 senators, 110 representatives, and more than 150 members of the staff of both bodies. There have been some 400 media visits to Guantanamo Bay, including more than a thousand American and international journalists. The [title] of the OSCE has been invited to visit Guantanamo Bay, and has accepted the invitation.

- The detention mission will continue due to the continued threat from terrorists. We want to prevent additional attacks, but not hold anyone longer than necessary. Approximately 180 detainees have been released while about 76 others have been transferred to the control of other governments. [check, corrections are as of last DOD Press Release of 11/5]
- We expect the population of detainees at Guantanamo to continue to decrease. Approximately 500 detainees remain.
- The danger to security of detainees is seen in the cases of a few former detainees who have returned to the fight (about twelve). Some detainees secured release by claiming to be farmers, truck drivers, cooks, small-scale merchants, or low-level combatants. Al-Qaeda training manuals also emphasize the tactic of making false abuse allegations.
- Maulavi Abdul Ghaffar and Mullah Shazada were both released from Guantanamo. Both were later killed in Afghanistan in 2004 fighting Afghan and U.S. Armed Forces.
- As the President has stated clearly, we will continue to look at ways to improve procedures and better manage detainees who pose a lethal threat to the world.
- The USG categorically and unequivocally does not endorse, tolerate or condone torture nor participate in the "export" of detainees for purposes of torture.
- Rendition is the movement of an individual from one country to another without that person's consent and outside of an extradition process. Renditions may be done for many reasons, including the removal of persons who attempt unlawfully to enter the U.S., to assist other governments to bring fugitive criminals to judicial process, to keep

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dangerous terrorists off the streets, or for intelligence purposes. U.S. policy is not to transfer a person to a country if it is determined that it is more likely than not that the person will be tortured or, in appropriate cases, that the person has a well-founded fear of persecution and would not be disqualified from persecution protection on criminal or security-related grounds. If a case were to arise in which the assurances obtained from the receiving government are not sufficient when balanced against treatment concerns, the United States would not transfer a detainee to the control of that government unless the concerns were satisfactorily resolved.

4. Additional background information and fact sheets can be found at the dedicated "Detainee Issues" page on INFOCENTRAL.
<https://infocentral.state.gov>

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